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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,536	10/31/2003	Percy A. Dickens	2826502.000001	9964
44777	7590	04/21/2005	EXAMINER	
W. EDWARD RAMAGE COMMERCE CENTER SUITE 1000 211 COMMERCE ST NASHVILLE, TN 37201			CHIN, PAUL T	
		ART UNIT		PAPER NUMBER
				3652

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/698,536	DICKENS, PERCY A.	
	Examiner	Art Unit	
	PAUL T. CHIN	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 January 2005 and 12 October 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 October 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

1. Applicant's amendment and the arguments presented with respect to claims 1-17 have been fully considered and are persuasive in light of amended claims. Note that applicant adds new claims 18 and 19 in the amendment. The claim rejections of Phillips, Sullivan, and Hall have been withdrawn. However, Applicant's arguments are moot in view of the new ground(s) of rejection. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL.

2. Applicant's election with traverse of the species of Fig. 6, Group II, in the reply filed on January 31, 2005, is acknowledged. Note that the election of species of was required after the applicant provides the additional new drawings (Figs. 6-8). The traversal is on the ground(s) that "it would not be unduly burdensome to include all disclosed variations of the base mount or end pieces in a single application". This is not found persuasive because applicant fails to "submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record (see the office action mailed on 12/28/2004). The examiner clearly points out that this application contains distinct species of the claimed invention: the species of Figs. 3 (a rectangular single base mount 2), the species of Fig. 6 (two rectangular mounts with three rectangular-shaped cross pieces connected the two mounts), the species of Fig. 7 (end piece with mesh structure), and the species of Fig. 8 (end piece with a solid plate), which contains distinct species of the claimed invention. Searching for the distinct species all together would give a burdensome to the examiner. Therefore, the requirement is still deemed proper and is therefore made FINAL. Note that applicant elects group II (Fig. 6), readable on claims 1-17. Applicant adds new claims 18 and 19 which also appear to read on Fig. 6.

Claim Objections

3. Claim 7 is objected to because of the following informalities: it appears that the recited words "the rods" should be changed to "the loops". Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-19 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meaning of the recited phrase "a series of three or more closed loops" (claim 1, line 5), particular "closed loop", is not clearly understood. None of the figures shows a "closed loop" and it appears that the meaning of "a closed loop" should be "an endless loop". However, applicant recites "a closed loop having two ends in claim 3, which is contrary to the previously recited "closed loop" of claim 1.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3652

7. Claims 1,2,4-7, and 12-19, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Robinson (3,068,634).

Robinson (3,068,634) discloses a device for retrieving cones (22), comprising an elongated handle (28), a base mount (38) in the form of a rectangular (see Fig. 1) affixed to one end of the handle, a series of at least three loops (see Exhibit A) affixed to the base mount (38) in substantially parallel to form a basket with two opposing ends (see Figs. 1 and 2) capable of holding at least two objects (Fig. 2) wherein the loops are formed of a single wire.

Re claim 5, two rectangular pieces (Fig. 1) affixed to each other in parallel by at least one or more cross bars or pieces (see Exhibit A).

Re claims 6 and 7, the loops are removably or permanently affixed to the base mount (38).

Re claims 12-17, at least one end of the basket is closed by a continuation of the series of loops (Fig. 3), a closing device (24,26) having a single bent or curved rod, a grid or mesh structure (see Fig. 3).

Re 18 and 19, the flexible loops of the Robinson's retrieving device (3,068,634) are spaced apart in an array (Figs. 1 and 2) a distance at least a diameter of a golf ball.

8. Claims 1-4,6-14,16,17, and 19, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by McDonald (4,322,939) (see PTO-892).

McDonald (4,322,939) discloses a device for retrieving objects, comprising an elongated handle (26), a metal base flat plate (Col 2, lines 54-58) in the form of a rectangular (see Figs. 1 and 4) affixed to one end of the handle, a series of at least three loops (12,14,16) (see Figs. 1 and 4) affixed to the base mount in substantially parallel to form a basket

with two opposing ends (see Figs. 1 and 4) capable of holding at least two objects (Fig. 4). It is pointed out that the "upper portions of the tines are parallel with each other and secured to each other side by side" (see Col 2, lines 37-39). Note also that the bottom portion of the loops are also in parallel to each other (see Figs. 1 and 4).

Re claim 2, each loop (12,14,16,18,20) is formed from a single rod or wire.

Re claim 3, the loops are formed from a plurality of curved wires with two ends (see Figs 1 and 4) being fixed to base mount.

Re claim 6, the loops are permanently affixed to the base mount (Col 2, lines 54-58).

Re claims 8,9, and 11, at least one loop is bent in at least two places (see Fig. 2) and two of the bents (vertical wire and horizontal wire as shown in Fig. 2) are approximately 90 degree.

Re claim 10, the bottom face of the loops are flat (see Fig. 2).

Re claims 12-14 and 16, at least two end pieces (18,20,22,24) having a series of loops or a single bent or curved wire wherein end piece (22 or 24) is hingely attached to the base mount.

Re claim 17, figure 2 shows at least one loop being at an angle in three places.

Re claim 19, the loops are flexible enough to allow objects to be squeezed between the loops into the basket so that the gathered objects will not fall through the spacing of the loops (Col 2, lines 41-53).

9. Claims 1-4,6,8-11,18, and 19, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Hartley et al. (3,115,740) (see PTO-892).

Hartley et al. (3,115,740) discloses a device for retrieving fruits or nuts, comprising an elongated handle (8), a base mount (10) in the form of a rectangular (see Fig. 1) affixed

to on end of the handle, a series of at least three loops (see Figs. 1 and 2) affixed to the base mount (10) in substantially parallel to form a basket (see Figs. 1 and 2) with two opposing ends (12,12) (see Fig 2) capable of holding at least two objects (Fig. 1).

Re claims 2 and 3, figure 2 shows a single loop and the loops are formed from a plurality of bent rods or wires with two ends (see Fig. 2).

Re claim 6, the loops are permanently affixed to the base mount (10).

Re claims 8,9, and 11, at least one loop is bent in at least two places (see Fig. 2) and two of the bents (vertical wire and horizontal wire as shown in Fig. 2) are approximately 90 degree.

Re claim 10, the bottom face of the loops are substantially flat (see Fig. 2).

Re 18 and 19, the flexible loops of the Hartley et al. device (3,115,740) are spaced apart in an array (Fig. 1) a distance at least a diameter of a nut, which can be the diameter of a golf ball.

10. Claims 1-4,6, and 8-19, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Fu (6,481,768).

Fu (6,481,768) discloses a device for retrieving golf balls, comprising an elongated handle (2), a base mount (10,12) in the form of a rectangular (see Fig. 2) affixed to on end of the handle, a series of at least three loops (see Figs. 2-6) affixed to the base mount (10) in substantially parallel (at the upper portions and the lower portions) to form a basket with two opposing ends (22) (see Fig 2) capable of holding at least two objects.

Re claims 2 and 3, figure 2 shows a single loop and the loops are formed from a plurality of bent rods or wires with two ends (see Figs. 2-6).

Re claim 6, the loops are permanently affixed to the base mount (10,12).

Re claims 8,9, 11, and 17, at least one loop (11) is bent in at least three (see Fig. 2) and two of the bents (vertical wire 111 and horizontal wire 113 as shown in Fig. 2) are approximately 90 degree.

Re claim 10, the bottom face of the loops are flat (see Figs. 2-6).

Re claims 12-16, both of the ends are closed by a series of loops (see Fig. 2) or end pieces further having closing devices (22,22).

Re 18 and 19, the flexible loops of Fu (6,481,768) are spaced apart in an array (Fig. 1) a distance at least a diameter of a golf ball.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDonald (4,322,939).

McDonald retrieving device (4,322,939), as presented in section 8 above, is to gather oranges, but does not show that the spacing between the loops are at least the diameter of golf ball. However, it would have been obvious design choice to modify the spacing to be smaller on the McDonald retrieving device (4,322,939) so that the modified device can be also used for smaller fruits.

Response to Arguments

13. Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3652

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Applicant's amendment (the addition of new limitations on claim 1 in combination with other structural limitations) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3652

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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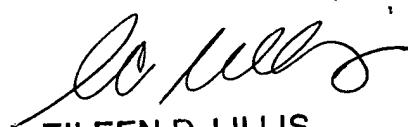

EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Exhibit A

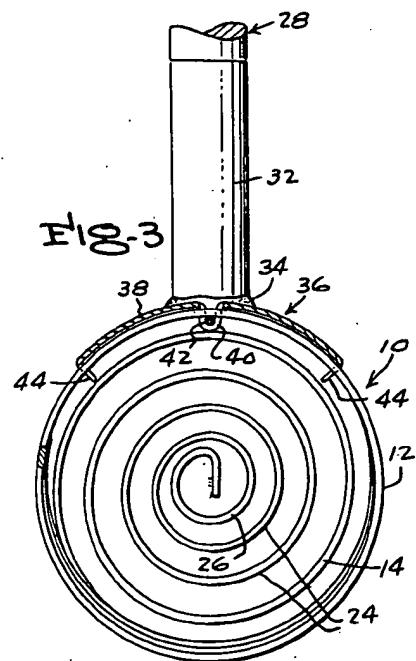
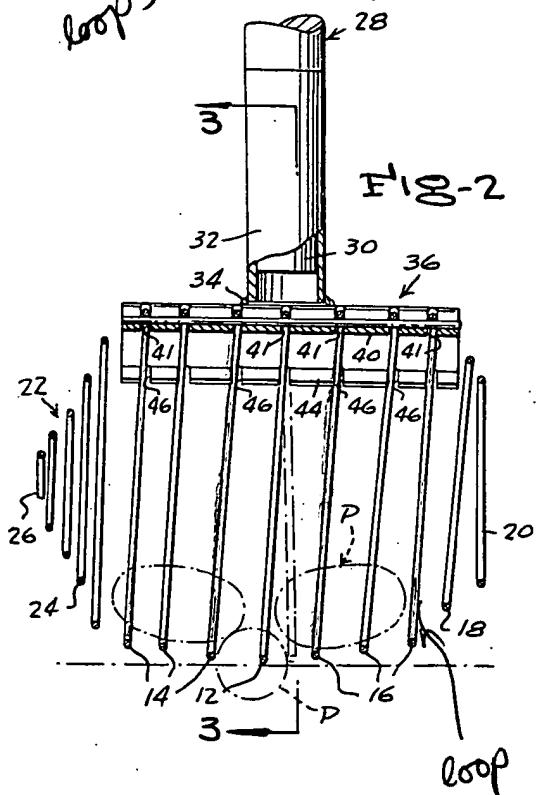
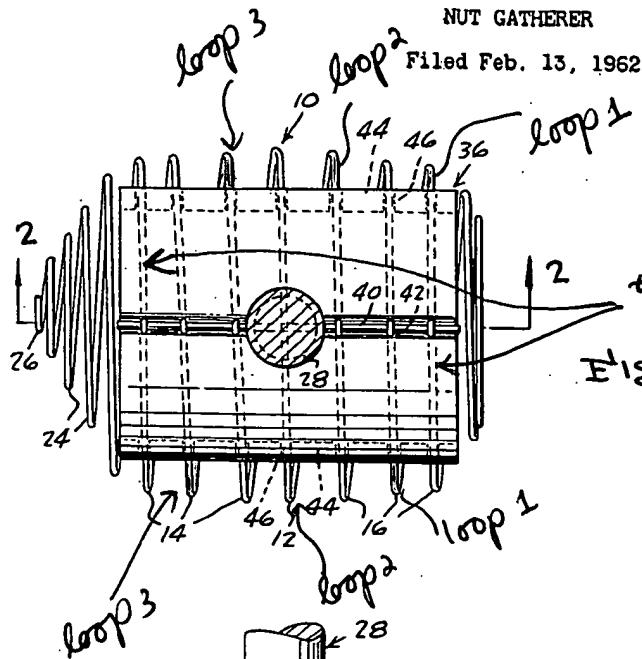
Dec. 18, 1962

J. B. ROBINSON

3,068,634

NUT GATHERER

Filed Feb. 13, 1962



INVENTOR
JOHN B. ROBINSON
BY

Morrow, German, Davidson
ATTORNEYS